

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY MARQUET CAMPBELL,

Plaintiff,

No. CIV S-05-563 LKK GGH P

vs.

J. SCOGIN, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
6 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
8 U.S.C. § 1915A(b)(1),(2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16 A complaint, or portion thereof, should only be dismissed for failure to state a
17 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
18 of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King &
19 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also
20 Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing
21 a complaint under this standard, the court must accept as true the allegations of the complaint in
22 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the
23 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.
24 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

25 Plaintiff names as defendants the following correctional staff: J. Scogin, D.
26 Rosensteel, G. Moreno, A. Pereira, G. Nies, B. Jackson, alleging that he was deprived of his right

1 to due process when the findings and disposition of his February 17, 2005 CDC 115 Rules
 2 Violation hearing did not issue timely. Complaint, pp. 2-3. Plaintiff was assessed a 30-day
 3 credit loss and seeks money damages in the amount of thirty-five million dollars. Id., at p. 2 and
 4 unnumbered attached page.

5 In Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), an Indiana state
 6 prisoner brought a civil rights action under § 1983 for damages. Claiming that state and county
 7 officials violated his constitutional rights, he sought damages for improprieties in the
 8 investigation leading to his arrest, for the destruction of evidence, and for conduct during his trial
 9 (“illegal and unlawful voice identification procedure”). Convicted on voluntary manslaughter
 10 charges, and serving a fifteen year term, plaintiff did not seek injunctive relief or release from
 11 custody. The United States Supreme Court affirmed the Court of Appeal’s dismissal of the
 12 complaint and held that:

13 in order to recover damages for allegedly unconstitutional
 14 conviction or imprisonment, or for other harm caused by actions
 15 whose unlawfulness would render a conviction or sentence invalid,
 16 a § 1983 plaintiff must prove that the conviction or sentence has
 17 been reversed on direct appeal, expunged by executive order,
 18 declared invalid by a state tribunal authorized to make such
 determination, or called into question by a federal court’s issuance
 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
 bearing that relationship to a conviction or sentence that has not
 been so invalidated is not cognizable under 1983.

19 Heck, 512 U.S. at 486, 114 S. Ct. at 2372. The Court expressly held that a cause of action for
 20 damages under § 1983 concerning a criminal conviction or sentence cannot exist unless the
 21 conviction or sentence has been invalidated, expunged or reversed. Id.

22 In Edwards v. Balisok, 520 U.S. 641, 117 S. Ct. 1584 (1997), the Supreme Court
 23 held that Heck applies to challenges to prison disciplinary hearings when the nature of the
 24 challenge to the procedures could be such as necessarily to imply the invalidity of the judgment.
 25 Edwards rejected the Ninth Circuit’s holding in Gotcher v. Wood, 66 F.3d 1097, 1099 (9th Cir.
 26 1995) that a claim challenging only the procedures employed in a disciplinary hearing is not

1 barred by Heck.

2 Plaintiff has made no showing that the prison disciplinary action at issue has been
3 invalidated or expunged. The complaint will be dismissed but plaintiff will be given leave to
4 amend.

5 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
6 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
7 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
8 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
9 there is some affirmative link or connection between a defendant's actions and the claimed
10 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
11 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
12 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board
13 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

14 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
15 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
16 amended complaint be complete in itself without reference to any prior pleading. This is
17 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
18 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
19 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
20 original complaint, each claim and the involvement of each defendant must be sufficiently
21 alleged.

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

24 2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

25 The fee shall be collected and paid in accordance with this court's order to the Director of the
26 California Department of Corrections filed concurrently herewith.

1 3. The complaint is dismissed for the reasons discussed above, with leave to file
2 an amended complaint within thirty days from the date of service of this order. Failure to file an
3 amended complaint will result in a recommendation that the action be dismissed.

4 DATED: 7/14/05

5
6 /s/ Gregory G. Hollows

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8 GREGORY G. HOLLOWS
9 UNITED STATES MAGISTRATE JUDGE

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